

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LINDELL BROWN, a/k/a ANTHONY MARK,  
a/k/a ARTHUR RAGLANO,

Defendant-Appellant.

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UNPUBLISHED

March 6, 2007

No. 267117

Wayne Circuit Court

LC No. 05-007434-01

Before: Hoekstra, P.J., and Markey and Wilder, JJ.

PER CURIAM.

Defendant appeals by leave granted from his plea-based conviction of possession with intent to deliver over 1000 grams of cocaine, MCL 333.7401(2)(a)(i), for which the trial court imposed a sentence of 9½ to 20 years' imprisonment. Defendant conditioned his plea on retaining the prerogative to seek appellate review of a challenge to the legality of the search that led to his arrest. We affirm. This case is being decided without oral argument in accordance with MCR 7.214(E).

The federal and state Constitutions guarantee the right to be free from unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11. Evidence obtained in the course of a violation of a suspect's rights under the Fourth Amendment is subject to suppression at trial. *People v Cartwright*, 454 Mich 550, 557-558; 563 NW2d 208 (1997); see also *Mapp v Ohio*, 367 US 643, 654-656; 81 S Ct 1684; 6 L Ed 2d 1081 (1961) (incorporating the Fourth Amendment against the states under the Fourteenth Amendment). To be reasonable, a search must follow from probable cause. See, e.g., *People v Lewis*, 251 Mich App 58, 68-69; 649 NW2d 792 (2002).

In reviewing the suppression question, the circuit court relied on the record of the preliminary examination in lieu of taking additional testimony. In reviewing a trial court's decision following a suppression hearing, we review the trial court's factual findings for clear error, but review the legal conclusions de novo. See *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005).

At the preliminary examination, a police officer testified that he and his partner pulled defendant's car over after observing it change lanes and then speed away from a construction zone. The officer said that he approached the car on the passenger side, found the front

passenger window rolled down, and detected “the distinct smell of marijuana emanating from the vehicle.” The witness recounted his partner’s engaging in argument with defendant, with the latter insisting that the partner contact a rental company to verify that the car was a rental. The officer continued that he informed defendant that, for want of more paperwork on the vehicle than the rental company’s brochure, he wished to check the vehicle identification number (VIN) on the inside of the door, and that defendant would be free to go if the car was not stolen. According to the officer, defendant was agreeable and exited the vehicle voluntarily. The officer checked the VIN on the door, then pulled at a seatbelt to see if information at the base of it agreed, and then “happened to see” a duffel bag in the back seat, and what his training suggested might be cocaine packaging protruding from it. Further investigation confirmed that the bag held a large quantity of cocaine. On cross-examination, the officer admitted that he had been able to see the VIN on the dashboard without entering the vehicle.

Upon review of this testimony, the circuit court denied the motion to suppress on the ground that “[p]robable cause to search a vehicle may be premised on the officer’s recognition of the smell of burned or unburned marijuana.” The court further stated that it found the testimony of the police officer credible.

On appeal, defendant emphasizes caselaw holding that the police may not enter the passenger space of a motor vehicle to ascertain the VIN if the number is visible from the outside. See *New York v Class*, 475 US 106, 119; 106 S Ct 960; 89 L Ed 2d 81 (1986). While defendant has raised a significant issue regarding whether the search of his car was lawful based upon the attempt to locate VINs, we nevertheless agree with the trial court that the validity of this search must be sustained because the odor of marijuana was detected coming from the vehicle. Our Supreme Court has held that “the smell of marijuana alone by a person qualified to know the odor may establish probable cause to search a motor vehicle . . . .” *People v Kazmierczak*, 461 Mich 411, 426; 605 NW2d 667 (2000). In this case, a police witness testified that he smelled a strong odor of marijuana before there was any invasion of the passenger compartment. Further, the police witness indicated that he has been trained to identify the sight and smell of marijuana and has smelled marijuana previously in the course of his duties. A full search of the vehicle, to the extent consistent with hunting for marijuana, was proper as of that moment.

Defendant makes issue of the testimony that after allegedly smelling marijuana, the police officer did not assert the right to search the vehicle, but instead advised defendant that upon determining that the vehicle was not stolen he would be free to go. However, defendant cites no authority for the proposition that where a police officer has probable cause to conduct a search, that officer loses that prerogative upon misleading the suspect concerning the nature or extent of the suspect’s detention. Nor does defendant cite authority for the proposition that where probable cause exists in fact, a search consistent with it becomes improper if the officer does not articulate the reason for the search, or otherwise indicate a full understanding of that prerogative.

Because the trial court correctly held that the smell of marijuana justified the search that followed, we reject defendant’s argument on appeal, and affirm his conviction and sentence.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Jane E. Markey

/s/ Kurtis T. Wilder